

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,132

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Appeal of)

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INTRODUCTION

The petitioner requests expungement of a finding by the Department of Social and Rehabilitation Services (SRS) that she physically abused her stepdaughter.

FINDINGS OF FACT

1. The petitioner, who is the mother of two girls, became the step-mother of two more girls in June of 1990, all of whom lived with her from time to time.
2. One evening, in October of 1993, the petitioner had a particularly difficult time with the girls' rowdy behavior. At that time they were all adolescents and teenagers and were supposed to be going to sleep in the same bedroom. Instead of sleeping, they were jumping from bunk bed to bunk bed. The petitioner was both angered by their disobedience and afraid that they might get hurt and warned them to settle down. When they did not settle down after several warnings, she got a two inch wide leather belt, formed it into a loop and swatted each of the girls on the buttocks with the belt. When she came to her eleven-year-old-stepdaughter, M.D., the girl put her arms behind her back just before the belt struck her to ward off the blow. The girl was struck on the arms by the leather. The Department did not allege nor offer any evidence that the girl was hit more than once in that position.⁽¹⁾
3. The next day, M.D. went to her guidance counselor at school who observed that she had black and blue bruises on the upper part of her right arm and over her left elbow. M.D. told the guidance counselor what had happened and the counselor then reported the incident to SRS.
4. SRS investigated the incident and concluded that the child had been abused. This conclusion was based on interviews with the child, observation of bruises on her upper right arm and left arm and interviews with the step-mother who candidly admitted what had happened and expressed remorse over her behavior. The supervisor reviewing the case concluded that the petitioner's candor and remorse made it unlikely that such an event would occur again and did not feel the child was in future jeopardy. However, the "purposeful infliction" of a blow in the heat of anger was an event which, in his judgment, had placed the child in physical danger at the time of the occurrence and warranted a finding of physical abuse.

5. The petitioner does not dispute any of the above findings. She agrees that she was "at her wit's end" and struck her step-daughter one time with the belt across the buttocks. She did not intend to hit her on the arm but the child thrust her arms in the way before she could stop the swing of her arm. She agrees that the belt landing on the back of her arms caused the bruising. She stated that she only used a belt infrequently as a last resort to discipline her children and that since that time she has ceased its use altogether. Subsequent to this event, she attended step-parenting and other family skills courses and belongs to a support group for mothers with children with behavioral problems (this same step-child eventually became a behavioral problem which led her to foster care for reasons unconnected to this incident.) She has also done extensive volunteering for groups that deal with kids. Most recently she volunteered at a shelter for runaway children but had to leave that job after her name appeared on the registry. She says in light of her rehabilitative efforts, she should be given a second chance.

6. The Department will not reverse the finding because it believes the initial decision was correct and that it has no authority under the statute to remove a name from the registry due to rehabilitation. The supervisor commended the petitioner for her efforts to change her behavior but added that the entire family was required as part of an SRS reunification plan to take part in family courses after M.D. was placed in foster care.

ORDER

The decision of the Department is reversed.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

In order to sustain its burden, SRS is required to show that the registry report is based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused . . ." See 33 V.S.A. § 4912(10).

In this case the Department's report has been shown to be both accurate and reliable as to the facts. The petitioner had admitted that she has no dispute with the factual findings. The second prong of this test is whether a reasonable person would believe that the child is abused based on these facts. The statute at 33 V.S.A. § 4912 defines abused child, in pertinent part, as follows:

(2) An "abused or neglected child "means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. . . .

. . .

(3) "Harm" can occur by:

(A) Physical injury or emotional maltreatment;

. . .

(6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

While the Department is correct that the petitioner intended to strike her step-daughter on the buttocks, there is no evidence that she intended to strike her on the arms, clearly a more vulnerable part of her body. The evidence indicates that the blow on the arms was an accident caused by the child rapidly changing their position to ward off the belt from hitting her buttocks. It cannot be found, therefore, that the petitioner intentionally hit the child on the arms. Since the "injury" (the bruise) in this matter was caused by accidental means, it does not meet the definition of physical abuse found in the statute above.

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1. The Department claimed to have information that there were several small bruises on the child's arms although there was no claim made that more than one swat took place. However, it presented no admissible evidence of that fact, relying solely on the testimony of a supervisor who took no role in the primary investigation and did not see the bruises. The petitioner testified that she thought there was only one bruise on each arm based upon her observations. Because her testimony was found to be credible and because the Department offered no testimony on that issue by any other eyewitness to the injury, the petitioner's version is found to be accurate and uncontroverted in the evidence.

2. The Department does not argue that the petitioner's attempt to spank her child with a belt was in and of itself physically abusive. Even if it had, it would have had to demonstrate some kind of aggravating factor such as repeated and excessive force used in this kind of discipline to meet the above definition of physical abuse. See Fair Hearings No. 10,867 and 10,941.